

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8550, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557, and 8559 of said Code, proposes to amend Sections 163 and 164, Title 14, California Code of Regulations, relating to the Commercial Herring Fishery.

Informative Digest/Policy Statement Overview

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish fishing quotas, set the minimum mesh size in Tomales Bay, establish season dates and times that fishing operations are allowed, specify issuance of permits by first-class mail, modify the maximum number of permits in San Francisco Bay before being re-issued, modify the requirements for vessel identification on the vessel house and modify Section 163 for consistency with Section 163.1.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, California Code of Regulations (CCR):

The proposed regulations would establish fishing quotas by area for the 2006-07 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. Three options are provided for the San Francisco Bay quota. San Francisco Bay Quota Option 1 would set the quota at 14,505 tons which represents 10 percent of the 2005-06 spawning biomass estimate. If the Commission were to adopt San Francisco Bay Quota Option 1, a 14,505-ton quota, this would result in a 25.6-ton individual quota for a "CH" gill net permittee and a 7.7-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. San Francisco Bay Quota Option 2 would set the quota at 13,171 tons which represents a reduction in the quota at ten percent by the percentage of three-year old fish (9.2 percent) estimated to comprise the 2005-06 commercial landings. This quota represents 9.1 percent of the spawning biomass estimate. If the Commission were to adopt Quota Option 2, a 13,171-ton quota, this would result in a 23.2-ton individual quota for a "CH" gill net permittee and 7.0-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. San Francisco Bay Quota Option 3 would set the quota at 4,502 tons which represents 7.6 percent of the 2004-05 spawning biomass estimate. If the Commission were to adopt San Francisco Bay Quota Option 3, a 4,502-ton quota, this would result in a 7.9-ton individual quota for a "CH" gill net permittee and a 2.3-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.

- A set fishing quota of 350 tons (seventeen percent of the 2005-06 spawning biomass estimate of 3,686 tons) is proposed for Tomales Bay, with no provisions to increase the quota in-season.

- The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, shall be no less than 2 inches or greater than 2-1/2 inches. This proposal finalizes the study to evaluate the effect of reduced mesh size on the length and age composition of herring caught in 2-inch mesh gill nets in Tomales Bay.
- The proposed regulations would set the dates of the roe herring fisheries in San Francisco Bay from 5 p.m. on Sunday, December 3, 2006, until noon on Friday, December 22, 2006 ("DH" gill net platoon only), and from 5:00 p.m. on Tuesday, January 2, 2007, until noon on Friday, March 9, 2007, for the odd and even platoons.
- The proposed regulations would set the dates of the roe herring fisheries in Tomales Bay from noon on Tuesday, December 26, 2006, until noon on Wednesday, February 28, 2007.
- The proposed amendment would specify that all herring permit applications, transfer fees, authorized agent requests and fresh fish permit applications be sent to the License and Revenue Branch in Sacramento, California, and would modify the regulations to provide that the Department mail permits via first-class mail not certified mail.
- The proposed amendment would specify 80 permits would be the threshold for re-issuing DH permits for the DH platoon and 160 permits would be the threshold for re-issuing permits for the odd and even platoons in the San Francisco Bay roe herring fishery.
- The proposed amendment would modify the regulations to allow vessel identification signage on the side of the house to be seen from air and eliminate the signage on the top of the wheel house.
- The proposed regulations would modify subsections (a)(5), (b)(1), (c)(1)(D), and (e)(2) of Section 163 regarding crew lists, multiple permit ownership, lottery qualification criteria and gill net vessel fishing for consistency with Section 163.1.
- The proposed regulations would correct the Herring Eggs on Kelp Permit Application number in subsection 164 (h)(1) to coincide with the 2006-07 season application.

Minor changes are proposed to clarify and simplify the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the California State Building 9, First Floor Auditorium, 744 P Street, Sacramento, California on Friday, August 4, 2006, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Museum of Natural History, Fleischmann Auditorium, 2559 Puesta del Sol Road, Santa Barbara, on Friday, August 25, 2006, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not

required, that written comments be submitted on or before August 18, 2006 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov, but must be received no later than August 25, 2006, at that address. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon Fischer or Sheri Tiemann at the preceding address or phone number. **Becky Ota, Marine Region, Department of Fish and Game, phone (650) 631-6789, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Overall the proposed 2006-07 regulations would benefit California's commercial herring fishermen and herring processing plants, all of which are small businesses as defined under Government Code Section 11342.610. Depending on which option the Fish and Game Commission (Commission) selects, net benefits would accrue to the San Francisco Bay herring fishery in the form of potential increased catches, revenues, and related economic activity. Harvest quotas for San Francisco Bay herring fishermen could be increased from 4,502 tons to 14,505 tons (Option 1), from 4,502 to 13,171 tons (Option 2), or remain status quo at 4,502 tons (Option 3).

Option 1 includes a proposed quota of 14,505 tons for San Francisco Bay in 2006-07, and represents potential ex-vessel revenues of as much as \$8,122,800 in the San Francisco Bay herring fishery, which consists of approximately 348 herring fishermen. Relative to the 2005-06 quota of 4,502 tons, this represents a potential revenue increase of \$5,601,680. This increased revenue projection is based on average price data from the 2005-06 season, assuming that the entire San Francisco quota is harvested in each year ($\$8,122,800_{2006-07} - \$2,521,120_{2005-06} = \$5,601,680$, presented in year 2005 dollars). Additionally, the Tomales Bay quota is proposed to be 350 tons, down from last season's 400 ton quota. While this reduction might appear to be a potential revenue loss of \$26,600 to the fishermen, historical landings on average are well below the proposed 350 ton quota. Only 18.5 tons of the Tomales Bay quota was landed in 2005-06, well below the 400 ton to 500 ton quota that was available. Over the last 10 seasonal quotas set for Tomales Bay, the landings only averaged 172.2 tons and never exceeded 356 tons for any one season. Thus no revenue losses are anticipated from the proposed 350 ton quota. The 2006-07 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2005-06. Thus the increase in potential ex-vessel revenue from all herring quotas, for all 348 herring fishermen, could be \$5,575,080 to \$5,601,680 under the proposed 2006-07 regulation. Using a regional output multiplier of 1.8478 and projected increases in ex-vessel revenues of \$5,575,080 to \$5,601,680, the increase in economic contribution of the 2006-07 herring fishery could be as much as \$10,301,684 to \$10,350,836 in year 2005 dollars.

Option 2 has a proposed quota of 13,171 tons for San Francisco Bay in 2006-07, and represents potential increases in ex-vessel revenues of as much as \$4,828,040 to \$4,854,640 in the herring fishery of 348 fishermen. This increased revenue projection is based on average price data from the 2005-06 season, assuming that the entire San Francisco quota is harvested in each year ($\$7,375,760_{2006-07} - \$2,521,120_{2005-06} = \$4,854,640$ in year 2005 dollars). As in the above option, the Tomales Bay quota is proposed to be 350 tons. The 2006-07 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2004-05. Thus the potential increase in ex-vessel revenue from all herring quotas, for all 348 herring fishermen, could be as much as \$4,828,040 to \$4,854,640 (in year 2005 dollars) under the proposed Option 2. Using a statewide output multiplier of 1.8478 and the projected ex-vessel revenue increases of \$4,854,640 the increase in economic contribution of the 2006-07 herring fishery could be as much as \$8,970,448 in year 2005 dollars. (This is calculated by taking the projected ex-vessel revenues and multiplying by a statewide demand output multiplier of 1.8748 times $\$4,854,640 = \$8,970,448$).

Option 3 has a proposed quota of 4,502 tons for San Francisco Bay, 350 tons for Tomales Bay, status quo for Humboldt Bay and Crescent City Harbor in 2006-07. Based on historic landings in the respective areas, and the information presented in Option 1 for Tomales Bay, we do not expect any adverse economic impacts associated with Option 3.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person

or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 27, 2006

John Carlson, Jr.
Executive Director